# BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

MURIEL DAVID STOFFER Claimant	}
VS.	) Docket No. 208,874
PAYLESS CASHWAYS, INC.	) DOCKET NO. 200,074
Respondent AND	)
THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA Insurance Carrier	

## ORDER

Respondent requested review of the preliminary hearing Order entered by Administrative Law Judge Floyd V. Palmer dated April 17, 1996.

### ISSUES

The Administrative Law Judge awarded claimant workers compensation benefits after finding that claimant sustained an accidental injury arising out of and in the course of his employment with the respondent. The respondent disputed that finding. In his brief the claimant raises the issue of whether the respondent timely filed its request for Appeals Board review.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record for preliminary hearing purposes, the Appeals Board finds as follows:

The preliminary hearing Order entered by the Administrative Law Judge should be affirmed.

The Administrative Law Judge found claimant to be "a very credible witness" and accepted his version of the facts regarding the alleged December 13, 1995 accident. Because the Administrative Law Judge was in the enviable and unique position to observe claimant testify and assess his demeanor, in this instance the Appeals Board gives some

deference to the Judge's opinion regarding claimant's credibility. In addition, the emergency room report from Lawrence Memorial Hospital dated December 18, 1995 contains a history of accident consistent with that alleged by claimant.

In his brief the claimant argues respondent failed to timely file its request for Appeals Board review and bases that argument on the contention that a request for review may not be made by telefax communication. Claimant cites no authority to support his argument although he contends it is a "well established" rule. The Appeals Board disagrees with claimant's contention regarding telefax communications and finds that respondent's request for Appeals Board review was timely.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Floyd V. Palmer dated April 17, 1996, should be, and hereby is, affirmed.

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Dated this day of June 1996.

## BOARD MEMBER

c: Chris Miller, Lawrence, KS Jeffrey D. Slattery, Kansas City, MO Floyd V. Palmer, Administrative Law Judge Philip S. Harness, Director